

### **500.090 Forfeiture.**

- (1) All property which is subject to forfeiture under any section of the Kentucky Penal Code shall be disposed of in accordance with this section.
  - (a) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be destroyed by the sheriff of the county in which the conviction was obtained.
  - (b) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be sold at public auction. The expenses of keeping and selling such property and the amount of all valid recorded liens that are established by intervention as being bona fide shall be paid out of the proceeds of the sale. The balance shall be paid to:
    1. The state, if the property was seized by an agency of the state or peace officer thereof;
    2. The county, if the property was seized by the sheriff or an agency or peace officer of the county;
    3. The Department of Fish and Wildlife Resources, if the property was seized by a peace officer of the Department of Fish and Wildlife or was seized by any other officer for violation of KRS Chapter 150;
    4. The city, if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the city property clerk;
    5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten percent (10%) of the proceeds), if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the sheriff or the county police; or
    6. The state, if the property was seized by any combination of agencies listed above.
  - (c) Subject to the duty to return confiscated firearms and ammunition to innocent owners pursuant to this section, all firearms and ammunition confiscated by a state or local law enforcement agency, all firearms ordered forfeited by a court, and all abandoned firearms and ammunition coming into the custody of a state or local law enforcement agency and not retained for official use shall be transferred to the Kentucky State Police for disposition as provided by KRS 16.220. The transfer shall occur not more than ninety (90) days after the abandonment of the firearm or ammunition to the law enforcement agency or not more than ninety (90) days after its confiscation, unless a court requires the firearm or ammunition for use as evidence, in which case it shall be transferred to the Kentucky State Police not more than ninety (90) days following the order of forfeiture by the court or after the court returns the firearm or ammunition from use as evidence. Prior to the sale of any firearm or ammunition, the law enforcement agency shall make a bona fide attempt to determine if the firearm or ammunition to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm and ammunition to its lawful innocent owner, unless that person is ineligible to

purchase a firearm under federal law. This subsection relating to auction of firearms and ammunition shall not apply to firearms and ammunition auctioned by the Department of Fish and Wildlife that may be sold to individual purchasers residing in Kentucky who are eligible under federal law to purchase firearms and ammunition of the type auctioned.

- (d) If property which is forfeited under any section of this code is determined by the trial court to be worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset, the court may abandon any interest in such property. Property which is abandoned pursuant to this section shall be returned to the lawful claimant upon payment of expenses for keeping the property.
  - (e) Property which is forfeited under any section of this code may, upon order of the trial court, be retained for official use in the following manner. Property which has been seized by an agency of the state may be retained for official state use. Property which has been seized by an agency of county, city, or urban-county government may be retained for official use by the government whose agency seized the property or for official state use. Property seized by any other unit of government may be retained only for official state use. The expenses for keeping and transferring such property shall be paid by the unit of government by which the property is retained.
- (2) Money which has been obtained or conferred in violation of any section of this code shall, upon conviction, be forfeited for the use of the state. This subsection shall not apply when, during the course of the proceeding in which the conviction is obtained, the person from whom said money was unlawfully acquired is identified.
  - (3) Property forfeited under any section of this code shall be disposed of in accordance with this section only after being advertised pursuant to KRS Chapter 424. This subsection shall not apply to property which is designed and suitable only for criminal use or to money forfeited under subsection (2) of this section.
  - (4) The trial court shall remit the forfeiture of property when the lawful claimant:
    - (a) Asserts his claim before disposition of the property pursuant to this section;
    - (b) Establishes his legal interest in the property; and
    - (c) Establishes that the unlawful use of the property was without his knowledge and consent. Subsection (4) shall not apply to a lienholder of record when the trial court elects to dispose of the property pursuant to subsection (1)(b) of this section.
  - (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.
  - (6) Before property which has had its identity obscured in violation of KRS 514.120 may be sold or retained for official use as provided in this section, the court shall cause a serial or other identifying number to be placed thereon and a record of the number assigned shall be placed in the court order authorizing the sale or retention of the property. This number shall be assigned, whenever applicable, in consultation with the Kentucky State Police and any other state or federal regulatory agency. The purchaser of the property shall be given a document stating that the property had

been forfeited pursuant to law and that a number, shown on the document, has been assigned which shall be deemed as compliance of the owner with KRS 514.120. When property is returned to an owner pursuant to this section and its identity has been obscured by another person in violation of KRS 514.120, the court shall provide a document to the owner relieving him of liability for its continued possession. This document shall serve as evidence of compliance with KRS 514.120 by the owner or any person to whom he lawfully disposes of the property. This section shall not apply to any person after property has been sold or returned in compliance with this section who violates the provisions of KRS 514.120 with respect to that property.

- (7) Before forfeiture of any property under this section, it shall be the duty of the trial court to determine if a lawful owner or claimant to the property has been identified or is identifiable. If a lawful owner or claimant has been identified or is identifiable, the court shall notify the owner or claimant that the property is being held and specify a reasonable period of time during which the claim may be made or may, in lieu thereof, order the return of the property to the lawful owner or claimant. If the lawful owner or claimant does not assert his claim to the property after notification or if he renounces his claim to the property, the property shall be disposed of as provided in this section. It shall be the duty of all peace officers and other public officers or officials having knowledge of the lawful owner or claimant of property subject to forfeiture to report the same to the trial court before the act of forfeiture occurs.

**Effective:** July 14, 2000

**History:** Amended 2000 Ky. Acts ch. 405, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 606, sec. 127, effective July 15, 1998. -- Amended 1980 Ky. Acts ch. 193, sec. 5; and ch. 267, sec. 1, effective July 15, 1980. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 473, effective January 2, 1978. -- Created 1974 Ky. Acts ch. 406, sec. 9, effective January 1, 1975.